

§214.5

(vii) A special use authorization governing surface use associated with the exercise of outstanding mineral rights;

(2) Denial of a special use authorization to a solicited applicant based on the process used to select a successful applicant;

(3) Implementation of new land use fees for a special use authorization, other than:

(i) Revision or replacement of a land use fee system or schedule that is implemented through public notice and comment; and

(ii) Annual land use fee adjustments based on an inflation factor that are calculated under an established fee system or schedule in accordance with the terms and conditions of a written authorization;

(4) Assignment of a performance rating that affects reissuance or extension of a special use authorization; or

(5) Denial of renewal of a special use authorization if it specifically provides for renewal and if the holder requests renewal of the authorization before it expires.

(d) *Other land uses.* Denial or revocation of a certification of compliance issued under 36 CFR part 292, subpart C, related to the use, subdivision, and development of privately owned property within the boundaries of the Sawtooth National Recreation Area.

(e) *Paleontological resources.* An authorization or permit issued under the Paleontological Resources Preservation Act of 2009 and 36 CFR part 291 for collection of paleontological resources.

[78 FR 33717, June 5, 2013, as amended at 80 FR 21629, Apr. 17, 2015]

§214.5 Decisions that are not appealable.

Holders, operators, and solicited applicants may not appeal under this part any decisions issued by a Responsible Official that are not expressly set forth in §214.4.

§214.6 Notice of an appealable decision.

(a) The Responsible Official shall promptly give written notice of decisions subject to appeal under this part to the affected holder, operator, or solicited applicants and to any holder of a similar written authorization who

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has made a written request to be notified of a specific decision.

(b) If the decision is appealable, the notice must specify the contents of an appeal, the name and mailing address of the Appeal Deciding Officer, and the filing deadline. The notice shall also include a statement indicating the Responsible Official's willingness to meet with the affected holder, operator, or solicited applicants to discuss any issues related to the decision and, where applicable, informing term grazing permit holders of the opportunity to request mediation in accordance with 36 CFR 222.20 through 222.26.

(c) If the decision is not appealable, the Responsible Official must include a statement in the written decision informing the affected holder, operator, or solicited applicants that further administrative review of the decision is not available.

§214.7 Levels of review.

(a) *Appeal.* (1) One level of appeal is available for appealable decisions made by District Rangers, Forest or Grassland Supervisors, and Regional Foresters. If a District Ranger is the Responsible Official, the appeal is filed with the Forest or Grassland Supervisor. If a Forest or Grassland Supervisor is the Responsible Official, the appeal is filed with the Regional Forester. If a Regional Forester is the Responsible Official, the appeal is filed with the Chief of the Forest Service.

(2) No appeal is available for decisions made by the Chief.

(b) *Discretionary review.* (1) Appeal decisions issued by Forest or Grassland Supervisors, Regional Foresters, or the Chief are eligible for discretionary review. If a Forest or Grassland Supervisor is the Appeal Deciding Officer, discretionary review is conducted by the Regional Forester. If a Regional Forester is the Appeal Deciding Officer, discretionary review is conducted by the Chief. If the Chief is the Appeal Deciding Officer, discretionary review is conducted by the Under Secretary for Natural Resources and Environment.

(2) Decisions made by the Chief that fall into one of the categories enumerated in 36 CFR 214.4 are eligible for discretionary review by the Under Secretary for Natural Resources and Environment.

§ 214.8 Appeal content.

(a) *General requirements for the contents of an appeal.* All appeals must include:

(1) The appellant's name, mailing address, daytime telephone number, and email address, if any;

(2) A brief description of the decision being appealed, including the name and title of the Responsible Official and the date of the decision;

(3) The title or type and, if applicable, identification number for the written authorization and the date of application for or issuance of the written authorization, if applicable;

(4) A statement of how the appellant is adversely affected by the decision being appealed;

(5) A statement of the relevant facts underlying the decision being appealed;

(6) A discussion of issues raised by the decision being appealed, including identification of any laws, regulations, or policies that were allegedly violated in reaching the decision being appealed;

(7) A statement as to whether and how the appellant has attempted to resolve the issues under appeal with the Responsible Official and the date and outcome of those efforts;

(8) A statement of the relief sought;

(9) Any documents and other information upon which the appellant relies; and

(10) The appellant's signature and the date.

(b) *Specific requirements for the contents of an appeal.* In addition to the general requirements in § 214.8(a), the following specific requirements must be included in an appeal, where applicable:

(1) A request for an oral presentation under § 214.16;

(2) A request for a stay under § 214.13; and

(3) A request to participate in a state mediation program regarding certain term grazing permit disputes under 36 CFR part 222, subpart B.

§ 214.9 Filing of an appeal.

(a) *Timeframe for filing an appeal.* An appeal must be filed with the Appeal Deciding Officer within 45 days of the date of the decision.

(b) *Method of filing.* Appeal documents may be filed in person or by courier, by mail or private delivery service, by facsimile, or by electronic mail. Parties to an appeal are responsible for ensuring timely filing of appeal documents.

§ 214.10 Dismissal of an appeal.

(a) The Appeal Deciding Officer shall dismiss an appeal without review when one or more of the following applies:

(1) The appeal is not filed within the required time period.

(2) The person or entity that filed the appeal is not a holder, an operator, or a solicited applicant of a written authorization that is the subject of the appealable decision.

(3) The decision is not appealable under this part.

(4) The appeal does not meet the content requirements specified in § 214.8(a), provided that an appeal may not be dismissed for failure to include an appraisal report which has not been completed by the filing deadline.

(5) The appellant withdraws the appeal.

(6) The Responsible Official withdraws the written decision that was appealed.

(7) An informal resolution of the dispute is reached pursuant to § 214.15 or a mediated agreement of a term grazing dispute is achieved pursuant to 36 CFR part 222, subpart B.

(8) The requested relief cannot be granted under applicable facts, laws, regulations, or policies.

(b) The Appeal Deciding Officer shall give written notice of the dismissal of an appeal and shall set forth the reasons for dismissal.

§ 214.11 Intervention.

(a) *Eligibility to intervene.* To participate as an intervenor in appeals under this part, a party must:

(1) Be a holder, an operator, or a solicited applicant who claims an interest relating to the subject matter of the decision being appealed and is so